IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 4301 of 2003

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

NAVINBHAI R GOYAL

Versus

PRATIBHA FABRICS LTD.

Appearance:

1. Criminal Misc.Application No. 4301 of 2003

MR CJ VIN for Petitioner No. 1

..... for Respondent No. 1

MR SS PATEL, APP for Respondent No. 2

CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 25/06/2003

ORAL JUDGEMENT

This is an application under Section 482 of the

Code of Criminal Procedure, 1973 (for short, "the Code") in order to quash Criminal Complaint No.2119/2000 filed by the contesting respondent against the petitioner for offences punishable under Section 138 of the Negotiable Instruments Act, 1881 as well as for offences punishable under Section 405 and 420 of IPC. It may be incidentally noted that though the complaint was filed for the aforesaid offences, the Court had issued process only for an offence punishable under Section 138 of the Negotiable Instruments Act, after recording verification of the complainant on oath.

2. The petitioner has contended that two cheques have been allegedly issued by the petitioner in favour of the contesting respondent on 15/10/2000 and 22/10/2000 amounting to Rs.23,924/- each. That, as per the aforesaid complaint, the first cheque was not honored by the bank, under a Bank Memo dated 18/10/2000 and the second cheque was dishonored and was made known to the contesting respondent by Bank Memo dated 27/10/2000. That, thereafter, the contesting respondent issued Notice to the petitioner dated 07/11/2000, requiring the petitioner to pay up the amount mentioned in the cheques. The said Notice was received by the petitioner on 15/11/2000. Therefore, the complaint was filed, as the amount was not paid by the petitioner.

3. The petitioner contends that the contesting respondent was late in issuing notice. In other words, notice was not issued within the stipulated time and therefore, complaint is also time barred. That, therefore, the Court ought to have taken cognizance of the offence and ought to have dismissed the complaint of the contesting respondent. That, in view of the above position, the complaint, the institution and continuation thereof is an abuse of process of Court, and therefore, it is required to be quashed. The petitioner, therefore, prays that the aforesaid complaint be quashed.

4. At the hearing, learned advocate for the petitioner has again reiterated the aforesaid facts. It has been contended by him that two cheques were allegedly issued by the petitioner, both standing for a sum of Rs.23,924/-. They were issued on 15/10/2000 and 22/10/2000 respectively. It is also contended that the cheques were presented to the concerned bank, within the stipulated period and they were returned by the Bank with Memo dated 18/10/2000 and 27/10/2000. That, thereafter, notice was issued on 07/11/2000 and as per the complaint, the notice was received by the petitioner on 15/11/2000. It is also contended that the complaint was filed on

19/12/2000 before the Magisterial Court at Surat.

5. It has been contended in para 4 of the petition that the first cheque bounced on 18/10/2000 and therefore, the cause of action for issuance of notice arised on the date on which the cheque bounced, i.e. on 18/10/2000. That, the notice ought to have been issued within 15 days thereof. In other words, as per the case of the petitioner, the contesting respondent ought to have issued notice within 15 days from 18/10/2000. As against that, the notice had been issued on 07/11/2000. Therefore, there was a delay in issuing notice and consequently, the complaint is barred, so far as the first cheque is concerned. So far, the second cheque is concerned, there was no serious dispute, even at the bar, when the matter was argued, that there was no bar of limitation.

6. The short question, which therefore, arises is as to whether the notice was issued late. Instead of issuing notice on 03/11/2000, it was issued on 07/11/2000. Now, it is required to be considered, that on going through the complaint, it transpires that the bank had issued Memo on 27/10/2000 intimating the contesting respondent that the cheque was dishonored. However, it will again be a question of fact as to the date on which the said Memo was received by the contesting respondent. It has not been read out from the petition or from the complaint as to the date on which the said memo was received by the contesting respondent. It is, therefore, again a question of fact as to the date on which the aforesaid Memo was received by the contesting respondent. When questions of fact arise before this Court, it would not be open to this Court to minutely deal with and decide such issues of fact. In other words, it does not appear to be an admitted fact as to the date of receipt of Memo by the contesting respondent. Therefore, I feel, that question of fact has arisen in the present case and therefore, it would not be open to this Court to deal with such issue in this petition.

7. It is required to be considered that the complaint has been filed for offences punishable under Section 138 of the Negotiable Instruments Act as well as for offences punishable under Section 405 and 420 of IPC. It is true that the Court has issued process for an offence punishable under Section 138 of the N.I. Act. A question would arise as to whether in the aforesaid fact situation, the complainant can be prevented from leading evidence with respect to the offences punishable under

Section 405 and 420 IPC and whether the Court can permit the complainant, contesting respondent, to lead evidence on those offences. This would again be a question, which will be required to be dealt with and decided by the trial court. In that view of the matter, the complaint cannot be treated to be even partly time barred. It is required to be considered that so far the offences punishable under Section 405(406) and 420 IPC are concerned, it does not appear to be the case of the petitioner that the complaint is time barred, with respect to those offences. At the same time, it is required to be considered that the offences punishable under Section 405(406) and 420 IPC are warrant triable cases and the offence punishable under Section 405(406) is one punishable with imprisonment for five years, whereas, the offence punishable under Section 420 is one punishable with imprisonment for seven years. Considering the provisions made in Section 468 of the said Code, it is clear that the said Section provides for limitation, in respect to the offences which are punishable with fine only or to the offences which are punishable with imprisonment, for a term exceeding one year and the offences which are punishable with imprisonment for a term exceeding one year and not exceeding three years. Admittedly, the offence punishable under Section 420 IPC is punishable with seven years and therefore, it would be difficult to state at this stage that the complaint is time barred, even partly.

7.1 At this stage, the learned APP has relied upon a decision in State of Himachal Pradesh V. Prithi Chand & Anr. reported in 1996(2) GLR, 699. There it has been observed by the Hon'ble the Apex Court that while exercising the powers of quashing, a criminal proceeding under Section 482 of the said Code, the High Court should not consider the effect of noncompliance of mandatory provisions, when prayer is to quash the proceedings prior to trial. It has also been observed that inherent powers to quash a complaint should be exercised only in the rarest of rare cases.

8. In above view of the matter, it does not prima facie appear that the complaint as a whole is time barred. In that view of the matter, this is not a fit case for exercising inherent jurisdiction under Section 482 of the Code to quash the complaint. In that view of the matter, there is no merit in the present application and it deserves to be dismissed.

9. For the foregoing reasons, this application is dismissed at admission stage.

(D. P. Buch, J.)

pravin/